Abd Jalil bin Rahmat v Hj Aman Shah bin Haji Abdul Rashid & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-01–36 OF 2005
SURIYADI, HELILIAH, AND WAN ADNAN MUHAMAD JJCA
9 JUNE 2008

Administrative Law — Exercise of administrative powers — Dismissal from service — Police force — Natural justice — Absence of complainant's counsel — Complainant not informed of contemplated dismissal if found guilty as charged — Whether proceedings conducted in accordance with natural justice

Police — Disciplinary proceedings — Dismissal — Natural justice — Absence of complainant's counsel — Complainant not informed of contemplated dismissal if found guilty as charged — Whether proceedings conducted in accordance with natural justice

The appellant was a former police officer, holding the last post of Corporal with the Cawangan Tugas Am, at the Ibu Pejabat Daerah Polis Johor Bahru. The first, second and third defendants/respondents were the agents of the fourth respondent (Kerajaan Malaysia). On 15 July 1996, the appellant appeared before the police disciplinary board on charges of disobeying orders by not declaring properties, namely a Proton Saga car with registration No JCH 4998 and a house at No 9, Jalan Ara 11, Taman Sri Pulai, 81100, Johor Bahru. At the conclusion of the hearing, the appellant was found guilty on both charges. For the charge of not declaring the house, fourteen days of the appellant's salary was deducted whilst for not declaring his car, the appellant was dismissed from his job. The appellant complained that the sentence of dismissal imposed on him was irrational and an outrageous decision. However, the respondents contended that the proceedings were conducted with strict compliance of the rules of natural justice and the appellant had, in the circumstances of the case, received procedural fairness. He also had the benefit of a full trial and was given the opportunity to cross-examine the witnesses as well as submit his defence.

Held, dismissing the appeal with costs:

(1) It could not be overly emphasised that in a case of this nature, where an aggrieved person sought judicial review, he must take cognisance of certain perimeters, namely the limited jurisdiction of a court to disturb the decision of an inquiry, and the evidential burden which the appellant could not escape from. A court is only interested in the decision making process. It is not the court's duty to consider whether the decision is fair and reasonable, but merely to scrutinise the process leading to that decision. Its own view took a back seat and might not substitute the decision as regards the appropriate penalty for the appellant's misconduct (see para 12).

(2) The complaint by the appellant could not be considered at this judicial review stage. Only if and when the decision making process was found to be flawed could the court interfere with the decision ie by declaring it null and void and thenceforth setting it aside (*Chief Constable of North Wales Police v Evans* [1982] 3 All ER 141 (refd)) (see para 13).

(3) The second perimeter was the applicant's evidential burden and responsibility. It would have been difficult for the appellant who failed to supply the notes of proceedings of the inquiry to establish that his dismissal was unreasonable, more so when at the High Court parties had consistently referred to the happenings of the inquiry. Likewise it was also not possible for the learned judge to assess what had actually happened at the inquiry stage with the absence of material before it. Any possibility of the adjudicating officer being bias or had an axe to grind against the appellant was also not established (*Suruhanjaya Perkhidmatan Awam Malaysia v Noordin bin Hassan* [1995] 3 MLJ 495) (see paras 14–15).

(4) Since the appellant had been warned, let alone twice he had been the cause of postponements, the unfettered discretion exercised by the adjudicating officer to proceed with the inquiry in the circumstances of the case was not an arbitrary one. In the circumstances, there was no error in the decision making process not to adjourn the inquiry (see para 20).

[Bahasa Malaysia summary

Perayu merupakan bekas pegawai polis, yang memegang jawatan terakhir sebagai Koperal di Cawangan Tugas Am, di Ibu Pejabat Polis Daerah Johor Bahru. Defendan-defendan/responden-responden pertama, kedua dan ketiga adalah agen-agen responden keempat (Kerajaan Malaysia). Pada 15 Julai 1996, perayu hadir di hadapan badan tatatertib atas tuduhan melanggar peraturan-peraturan dengan tidak mengisytiharkan harta-harta, iaitu sebuah kereta Proton Saga dengan nombor pendaftaran JCH 4998 dan sebuah rumah di No 9, Jalan Ara 11, Taman Sri Pulai, 81100, Johor Bahru. Pada

penghujung pendengaran, perayu didapati bersalah atas kedua-dua pertuduhan. Bagi tuduhan tidak mengisytiharkan rumah, gaji perayu selama empat belas hari ditolak sementara untuk kegagalan mengisytiharkan kereta, perayu dibuang kerjanya. Perayu mengadu bahawa hukuman buang kerja yang dikenakan ke atasnya tidak rasional dan keputusan yang melampau. Walau bagaimanapun, responden-responden menghujah bahawa prosiding tersebut telah dibuat dengan pematuhan secara ketat terhadap peraturan-peraturan keadilan semula jadi dan perayu telah, dalam keadaan kes tersebut, menerima keadilan prosedur. Dia juga mendapat faedah perbicaraan penuh dan diberi peluang untuk memeriksa balas saksi-saksi dan juga mengemukakan pembelaannya.

Diputuskan, menolak rayuan dengan kos:

(1) Ia tidak boleh lebih ditekankan lagi bahawa di dalam kes seperti ini, di mana seorang yang terkilan memohon untuk semakan kehakiman, dia mesti memberi perhatian kepada keadaan tertentu, iaitu bidang kuasa mahkamah yang terhad untuk mengganggu keputusan siasatan, dan beban keterangan yang mana perayu tidak boleh elakkan. Mahkamah hanya berminat kepada proses membuat keputusan. Ia bukan kewajipan mahkamah untuk mempertimbangkan sama ada keputusan tersebut adalah adil dan munasabah, tetapi hanya untuk meneliti proses yang membawa kepada keputusan tersebut. Pendapatnya sendiri mengambil peranan yang kurang penting dan mungkin tidak menggantikan keputusan berkaitan dengan penalti yang berpatutan bagi salah laku perayu (lihat perenggan 12).

(2) Aduan oleh perayu tidak boleh dipertimbangkan di peringkat semakan kehakiman ini. Hanya jika dan bila proses membuat keputusan didapati salah, mahkamah boleh campur tangan dengan keputusan iaitu dengan mengisytiharkannya batal dan tidak sah dan oleh itu mengenepikannya (*Chief Constable of North Wales Police v Evans* [1982] 3 All ER 141 (dirujuk)) (lihat perenggan 13).

(3) Keadaan kedua adalah beban dan kewajipan keterangan perayu. Ia akan menjadi rumit untuk perayu yang gagal untuk membekalkan nota-nota prosiding siasatan untuk membuktikan bahawa pembuangannya tidak munasabah, lebih-lebih lagi apabila di Mahkamah Tinggi pihak-pihak telah secara konsisten merujuk kepada kejadian-kejadian semasa siasatan. Begitu juga adalah mustahil untuk hakim yang bijaksana menilai apa yang sebenarnya berlaku di peringkat siasatan tanpa material di hadapannya. Apa-apa kemungkinan pegawai yang menghakimi menjadi berat sebelah terhadap perayu juga tidak dibuktikan (*Suruhanjaya Perkhidmatan Awam Malaysia v Noordin bin Hassan* [1995] 3 MLJ 495) (lihat perenggan 14–15).

(4) Oleh kerana perayu telah diberi amaran, tambahan pula dua kali dia menjadi sebab untuk penangguhan, budi bicara yang tidak terhad yang dilaksanakan oleh pegawai yang menghakimi untuk meneruskan dengan siasatan di dalam hal keadaan kes bukan secara sembarangan. Dalam hal ini, tidak terdapat kekhilafan di dalam proses membuat keputusan untuk tidak menangguhkan siasatan (lihat perenggan 20).]

Notes

For cases on dismissal, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1197–1229.

For cases on dismissal from service, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 36–42.

Cases referred to

Associated Provincial Picture Houses v Wednesbury Corp [1948] 1 KB 223, CA (refd)

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] MLJ 169, PC (refd)

Chief Constable of North Wales Police v Evans [1982] 3 All ER 141, HL (refd)

Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia [1994] 2 MLJ 114, SC (refd)

Lee Ah Tee v Ong Tiow Pheng & Ors [1984] 1 MLJ 107, FC (refd)

Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v Mohd Noor Abdullah [2004] 2 CLJ 777, FC (refd)

Suruhanjaya Perkhidmatan Awam Malaysia v Noordin bin Hassan [1995] 3 MLJ 495, CA (refd)

Legislation referred to

Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 reg 2, Schedule

Appeal from: Sivil Suit No 21–232 of 1997 (High Court, Johor Bahru).

Zulkiflee Othman (L Parthiban) for the appellant.

Azizah Nawawi (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Suriyadi JCA (delivering judgment of the court):

[1] This appeal was heard by us and at the end of it had unanimously dismissed it with costs. The High Court's decision was also affirmed.

[2] The appellant was a former police officer, holding the last post of corporal with the Cawangan Tugas Am, at the Ibu Pejabat Daerah Polis Johor Bahru. His last pay was RM1,124 excluding allowances and had been placed under the pension's scheme. The, first, second and third defendants (hereinafter referred to as the respondents are the agents of the fourth respondent (Kerajaan Malaysia).

[3] On 15 July 1996, the appellant had appeared before the police disciplinary board ('the inquiry') at the Ibu Pejabat Polis Kontinjen, Johor Bahru, Johor on charges of disobeying orders by not declaring properties, namely a Proton Saga car with registration No JCH 4998 and a house at No 9, Jalan Ara 11, Taman Sri Pulai, 81100, Johor Bahru.

[4] The first respondent had acted as the adjudicating officer and had conducted the inquiry on 15 July 1996. A counsel by the name of ASP Feisal bin Abdullah was appointed to represent the appellant in the disciplinary proceedings. Regretfully at that hearing date this appointed counsel was absent and as such the appellant had to go on alone as no postponement was granted. The appellant in the course of the inquiry had not pleaded guilty to any of the charges. At the conclusion of the hearing the appellant was found guilty on both charges. For the charge of not declaring the house, fourteen days of the appellant's salary was deducted whilst for not declaring his car, the appellant was dismissed from his job.

[5] A writ was filed by the appellant at the High Court seeking the following orders:

(i) a declaration that the order of dismissal by the first respondent dated 15 July 1996 was null and void;

(ii) a declaration that he was still a police officer holding the rank of corporal in the Police Force; and

(iii) a declaration that he be paid all arrears of emoluments from the date of dismissal.

[6] The appellant had contended that:

(1) the disciplinary proceedings was conducted in violation of natural justice as he was not given a fair trial;

(2) his application for adjournment due to the absence of the his counsel was denied by the first respondent;

(3) at all material times he was not informed of the contemplated dismissal if found guilty as charged;

(4) throughout the proceedings he was made to stand without being proffered a chair, table, note paper or any facilities for making notes;

(5) after the prosecution had closed its case, the first respondent forthwith handed down the sentence of dismissal without giving him the opportunity to defend his case and the opportunity to mitigate; and

(6) the sentence of dismissal imposed on him went against all tenets of rationality and was a an outrageous decision that no sensible person who had applied his mind to the question to be decided would have arrived at.

[7] As reflected by the respondents' submission they had contended that the proceedings was conducted with strict compliance of the rules of natural justice and the appellant had, in the circumstances of the case, received procedural fairness. He also had the benefit of a full trial and was given the opportunity to cross-examine the witnesses as well as submit his defence.

[8] The responded ventilated that the appellant never applied for an adjournment despite the absence of his counsel. Regardless of that it was the appellant's duty to ensure that his counsel was present during the hearing. In his appeal letter subsequently to the Inspector General of Police, the appellant had merely complained about the sentence and the possibility of DW1 being biased. There was no complaint about his application for adjournment being denied or that his counsel was not present. The appellant never complained about not been given a right to be heard. It was submitted by the respondents that it was within the discretion of the adjudicating officer whether to grant an adjournment or otherwise. The refusal if any was not unreasonable as adjournment was granted earlier also on the appellant's application. Vide letter dated 26 June 1996, the appellant had been advised that if he wanted an adjournment, he must do so in writing founded on reasonable grounds, as otherwise hearing would proceed.

[9] As regards the sentence the respondents had submitted that there was no necessity to inform the appellant of the contemplated sentence of dismissal. Prior to the finding of guilt the appellant had been given the opportunity to submit his defence to the charges, and later the opportunity to put in his mitigation.

[10] Additional to the above, the respondent canvassed that as the proceedings was for disciplinary purposes and not promotional, there was no requirement to extend the necessary comforts to the appellant. The unavailability of chair, table, papers and other facilities was not a breach of natural justice.

[11] At the end of the hearing before the High Court judge the appellant's suit was dismissed hence the appeal before this panel. To appreciate the appeal better I herewith reproduce the relevant facts in relation to the dates: A

(i) 26 June 1996: date of notice directing the appellant's attendance of the impending inquiry; B

(ii) 15 July 1996: date when the inquiry was held;

(iii) 4 February 1997: Date of appeal letter by the appellant to the Inspector General of Police;

(iv) 25 April 1997: the PDRM's reply to the above appeal letter; C

(v) 14 August 1997: date when the writ was filed by the appellant;

(vi) 2 February 2005: date when the High Court's decision was meted down; and D

(vii) 1 March 2005: date when the appeal was filed by the appellant to the Court of Appeal.

[12] It cannot be overly emphasised that in a case of this nature, where an aggrieved person seeks a judicial review, he must take cognisance of certain perimeters, namely the limited jurisdiction of a court to disturb the decision of an inquiry, and the evidential burden which the appellant cannot escape from. A court is only interested in the decision making process. It is not the court's duty to consider whether the decision is fair and reasonable, but merely to scrutinise the process leading to that decision. Its own view takes a back seat and may not substitute the decision as regards the appropriate penalty for the appellant's misconduct. E F

[13] The complaint by the appellant that the sentence of dismissal imposed on him being irrational and an outrageous decision, of which no sensible person who had applied his mind to the question to be decided would have arrived at, therefore could not be considered at this judicial review stage. Only if and when the decision making process is found to be flawed may the court interfere with that decision ie by declaring it null and void and thenceforth setting it aside (*Chief Constable of North Wales Police v Evans* [1982] 3 All ER 141). G H

[14] The second perimeter is the applicant's evidential burden and responsibility. He must take the blame for the weaknesses of his case, the shoddiness of his preparedness and nonchalant attitude, and not take the easy way out of blaming the respondent or the adjudicating officer for all the ills of his case. As reflected in the learned judge's written judgment as regards the appellant's failure to supply the notes of proceedings of the inquiry: I

A It is unfortunate that there are no records of proceedings before this court with regards to the conduct of the disciplinary proceedings. Both parties deemed it fit to proceed on the evidence of the plaintiff and the adjudicating officer, and not to place the record before the court.

B

[15] In the circumstances of the case, without the notes of proceedings supplied by the appellant, it would have been difficult for the appellant to establish that his dismissal was unreasonable, more so when at the High Court parties had consistently referred to the happenings of the inquiry. C Likewise it was also not possible for the learned judge to assess what actually happened at the inquiry stage with the absence of material before it. Any possibility of the adjudicating officer being bias or had an axe to grind against the appellant was also not established (*Suruhanjaya Perkhidmatan Awam Malaysia v Noordin bin Hassan* [1995] 3 MLJ 495).

D

[16] Despite the dearth of the notes of proceedings of the inquiry, the learned judge in this case still had managed to asses the credibility of the adjudicating officer, and eventually arrived at a finding of fact of the E acceptability of his evidence. Having perused his written judgment we failed to detect any error in his approach, decision making process and invariably his eventual decision. It must be understood that overwhelming evidence is required to establish that the decision was unreasonable deserving a setting aside order. The failure to supply the High Court with the notes of F proceedings of the inquiry certainly did no special favours to the appellant's case (*Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia* [1994] 2 MLJ 114; *Associated Provincial Picture Houses v Wednesbury Corp* [1948] 1 KB 223).

G

[17] As regards the issue of the adjournment, as per the brief facts supplied above, the appellant had been notified to attend the disciplinary proceedings vide a letter dated 26 June 1996. Paragraph 5 of the letter states that he had been informed and must turn up on the day fixed for hearing whilst para 6 H of the letter had warned him that the disciplinary proceedings would proceed on 15 July 1996 unless the appellant or his counsel applied in writing, on reasonable and acceptable grounds for another postponement. The appellant was given the opportunity to defend himself at the inquiry and also given the responsibility of ensuring the attendance of his counsel.

I

[18] The appellant in the course of the hearing at the High Court had tendered a written statement marked PW1, which admitted that the previous proceedings were postponed twice because of his non-attendance, together with his counsel. He admitted that at the time of the inquiry he had no idea

why his counsel was not present. With such an admission surely no blame could be placed on the door step of the appellant for the absence of his counsel.

[19] If I may take a leaf from Practice Direction 5/89, this document succinctly states that no court should postpone a case by reason of counsel being engaged in another case held in a superior court. In this appeal the predicament of the appellant was more untenable as he had no inkling of the whereabouts of his counsel or the reason for his absence. Devoid of any reason supplied by the appellant what other course of action could the adjudicating officer have taken but to proceed on with the inquiry? Apart from the above Practice Direction Hashim Yeop Sani FJ in *Lee Ah Tee v Ong Tiow Pheng & Ors* [1984] 1 MLJ 107 had occasion to opine:

> The discretion of the judge to allow or refuse an application for adjournment was a subject dealt with in depth by the Court of Appeal in *Dick v Filler*. We agree to and adopt the following principles as regards the discretion in allowing or refusing an adjournment:
>
> (1) Whether or not a party should be granted an adjournment is wholly at the discretion of the judge. He would exercise the discretion solely upon his view of the facts.
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> (2) Prima facie this discretion is unfettered.
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> (3) The question to ask in any particular case is whether on the facts there are adequate or sufficient reasons to refuse the adjournment.
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> (4) Although an appellate court has power to interfere with the Judge's decision in regard the granting of an adjournment, it would refrain from doing so unless it appears that such discretion has been exercised in a way which tended to show that all necessary matters were not taken into consideration or the decision was otherwise arbitrarily made.
>
> (5) An appellate court ought to be very slow to interfere with the exercise of the discretion. But if it appears that the result of the order made below would be to defeat the rights of the parties altogether or that there would be an injustice to one or the other of the parties then the appellate court has power and indeed a duty to review the exercise of the discretion.

[20] Since the appellant had been warned, let alone twice he had been the cause of postponements, the unfettered discretion exercised by the adjudicating officer to proceed with the inquiry in the circumstances of the case was not an arbitrary one. We detect no error in the decision making process not to adjourn the inquiry.

[21] Was it necessary to inform the appellant that he would be dismissed if found guilty of the two charges? Under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 (the 1970 Regulation), the set of punishments imposable is from the heaviest (dismissal) to the lightest (drill for 2 hours) under the Schedule (reg 2) of the 1970 Regulations. Further, nothing is provided for in this Regulations that entitles the appellant to be informed of the dismissal punishment.

[22] It is trite that for a right to be heard be worth anything, an aggrieved person must know the case made out against him, the evidence and statements made out against him and that he has been given an opportunity to contradict them (*B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] MLJ 169). That evidential right may be derived from the relevant statutory, under which he is being prosecuted, or may be precedent-based. If none is legislated or granted then none may be demanded. By analogy Siti Norma Yaakob FCJ in *Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v Mohd Noor Abdullah* [2004] 2 CLJ 777, had occasion to state:

> Reading the provisions of the 1970 Regulations in its entirety, *I see no requirement that entitles the respondent to be informed of the possibility of him being dismissed* or reduced in rank in the event he is convicted of any of the charges preferred against him in either the show cause letter or prior to the start of the disciplinary enquiry. There is no provision imposing a similar obligation as that prescribed by reg 28(1) of the 1993 Regulations. *Since the 1970 Regulations impose no duty on the first appellant to inform the respondent at the first opportunity of the likelihood of his dismissal or reduction in rank, the first appellant cannot be said to have deprived the respondent of any procedural fairness* as there cannot be any breach of duty where none exists in law.
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> (Emphasis added.)

[23] That being so, it was our view that there was no necessity to inform the appellant of the dismissal punishment, as both charges could attract the punishment of dismissal, let alone Parliament imposed no duty on an adjudicating officer to inform the person under inquiry of the impending punishment.

[24] Another issue to be considered is whether throughout the proceedings, when he was made to stand without being proffered a chair, table, note paper or any facilities for making notes, he had been deprived of natural justice. Before arriving at any conclusion, I need to state that there was no material before us which showed that the plaintiff was in any way prevented from making himself comfortable or stopped from demanding any assistance in

order to enable him to conduct his defence. This reason was also the basis of the rejection by the learned judge of this complaint when discussing it in his written judgment.

[25] With an inquiry of this nature not qualifying as a criminal prosecution, and the strict demands of a court of law being inapplicable, he should have reacted to any dissatisfaction by forwarding his complaints insitu. His act of blaming the blameless respondents for his poor attitude and all his woes are simply signs desperation. Apart from that inaction, his letter to the Inspector General of the Police, about six months after the inquiry, never at any time complained of his dissatisfaction. He merely complained of the sentence and the lack of professionalism and integrity of the adjudicating officer. Surely at that stage, with matters still being fresh in his mind, and had he felt so strongly about the alleged injustice, that dissatisfaction would have been the first matter to be penned in that letter of complaint. We can safely conclude that apart from the above act of desperation portrayed by the appellant we believe that this complaint was an afterthought.

[26] The last issue for our consideration is the accusation that after the prosecution had closed its case, the first respondent forthwith handed down the sentence of dismissal without giving the appellant the opportunity to defend his case and the opportunity to mitigate. On this issue, without the notes of proceedings at the inquiry, again our decision will have to rely heavily on the findings of the learned judge and the bare notes produced at the High Court. The learned judge in his judgment had written the following:

> The plaintiff alleged that he was not given the opportunity to defend himself and to mitigate. The Adjudicating Officer, DW1 had denied such an allegation. In evidence this is what he said at p 5 of his witness statement:
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> > Sebelum memulakan presiding, saya telah mengemukakan 2 tuduhan kepada plaintif. Tuduhan pertama adalah ingkar perintah kerana tidak mengisytiharkan harta sebuah rumah dan pertuduhan kedua adalah ingkar perintah kerana tidak mengisytiharkan sebuah kereta. Kedua-dua tuduhan tersebut adalah di mukasurat 3 dan 4 Ikatan Dokumen.
> >
> > Plaintif diminta untuk membuat pengakuan dan beliau tidak mengaku salah dan mahu dibicarakan. Perbicaraan dimulakan dengan memanggil saksi untuk memberi keterangan. Plaintif telah diberi peluang untuk menyoal balas saksi. Setelah itu saya telah mendapati bahawa tuduhan-tuduhan telah dibuktikan di mana Plaintif telah gagal untuk mengisytiharkan rumah dan kereta beliau. Selepas itu saya memanggil plaintif untuk membela diri dan memanggil saksi beliau. Plaintif tidak memanggil sebarang saksi. Saya merujuk kembali kepada fakta-fakta keterangan dan setelah meneliti segala keterangan saya telah membuat keputusan bahawa plaintif didapati 'BERSALAH' di atas kedua-dua pertuduhan. Sebelum menjatuhkan hukuman saya telah memberi peluang

kepada plaintif untuk mengemukakan rayuan untuk meringankan hukuman. Plaintif telah membuat rayuan supaya beliau dikenakan hukuman yang ringan sahaja kerana beliau telah berkeluarga.

However there is no reason not to believe what the adjudicating officer, DW1 said. I would accept what the adjudicating officer said in the court as the more probable of what transpired.

[27] I have no reason to disagree with the learned judge's findings bearing in mind that he had every opportunity to witness the demeanour of the contending parties and ask the relevant questions. He was in a better position than us. Additional to that, a scrutiny of the statement of claim and the appeal letter to the Inspector General of Police, complaining of the appellant being deprived of the right to mitigate was not pleaded or voiced out. We believe the latter issue was an obvious afterthought. Being unable to detect any error in the learned judge's decision making process enroute to the above view we therefore endorse his opinion and conclusions.

[28] Based on the above reasons we had unanimously dismissed the appeal with costs and accordingly affirmed the decision of the High Court. The deposit was ordered to account of taxed costs.

Appeal dismissed with costs.

Reported by Sally Kee